



Dkt. 67268-A/JPW/AG

TFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Norbert Schulke et al.

Serial No.: 10/804,802

Examiner: Sanjoo Shree Jalla

Filed : March 19, 2004

Art Unit: 1644

For : CD4-IgG2 FORMULATIONS

1185 Avenue of the Americas
New York, New York 10036
November 22, 2006

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

COMMUNICATION IN RESPONSE TO OCTOBER 23, 2006 OFFICE ACTION

This Communication is submitted in response to the October 23, 2006 Office Action issued by the United States Patent and Trademark Office in connection with the above-identified application. A response to the October 23, 2006 Office Action is due November 23, 2006. Accordingly, this Communication is being timely filed.

Supplemental Species Election:

In the October 23, 2006 Office Action, the Examiner acknowledged applicants' election with traverse. The Examiner stated that applicants have provisionally elected, with traverse, to prosecute the invention of Group I and the species "amino acid stabilizing agent". Applicants have traversed the restriction and election of species requirement on the grounds that it would not be an undue burden for the Examiner to search the alleged inventions of Groups II and III along Group I, and for similar reasons, a search of the elected species would lead to art pertaining to the other species of the invention. The Examiner stated that applicants' argument was not found persuasive and made final the restriction requirement. Accordingly, claims 42-99 and 111-132 have been withdrawn.

Applicants understand that according to M.P.E.P. §809.02(c), "[w]hen a generic claim is subsequently found to be allowable, and not more than a

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Applicants: Norbert Schulke et al.
Serial No.: 10/804,802
Filed: March 19, 2004
Page 2

reasonable number of additional species are claimed, treatment shall be as follows: (1) when all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that claims drawn to the nonelected species are no longer withdrawn since they are fully embraced by the allowed generic claim." Accordingly, applicants understand that although claims 42-99 directed to nonelected species have been withdrawn, applicants are entitled to consideration of such claims should claims 1-28 and 133-137 (generic claims) be found allowable.

Claims 1-41, 100-110 and 133-141 are pending and under examination. Upon further consideration, the Examiner has imposed a supplemental species election. Applicants are required to elect one specific "amino acid stabilizing agent" from among those recited in claim 38, i.e. alanine, proline, or glycine.

In response to the supplemental species election requirement, applicants hereby elect, with traverse, the supplemental species amino acid stabilizing agent glycine. In addition, applicants maintain that the claims which read on the supplemental species glycine are claims 1-41, 100-110, and 133-141.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the supplemental species election. Applicants submit that there would not be a serious burden on the Examiner if the supplemental species election were not required, because a search of the prior art relevant to glycine would identify other amino acid stabilizing agents such as alanine or proline. Therefore, there would be no serious burden on the Examiner to examine all the species of amino stabilizing agent together in the subject application.

In view of the foregoing, applicants maintain that the supplemental species election is not proper, and respectfully request that the Examiner reconsider and withdraw the requirement for supplemental election.

Applicants: Norbert Schulke et al.
Serial No.: 10/804,802
Filed: March 19, 2004
Page 3

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

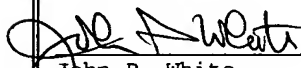
No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



11/22/06
John P. White Date
Registration No. 28,678